

PATENT COOPERATION TREATY

DOCKETED

From the
INTERNATIONAL SEARCHING AUTHORITY

AUG 08 2005

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PCT DUE DATE: 2-23-06
BY: ATB

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Applicant's or agent's file reference 03-1051-A		Date of mailing (day/month/year) 03 AUG 2005
FOR FURTHER ACTION See paragraph 2 below		
International application No. PCT/US05/14005	International filing date (day/month/year) 22 April 2005 (22.04.2005)	Priority date (day/month/year) 23 April 2004 (23.04.2004)
International Patent Classification (IPC) or both national classification and IPC IPC(7): A43B 3/24, 5/00; A43C 13/00 and US Cl.: 36/100, 101, 15		
Applicant CURRY, DAVID R.		

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer Anthony Stashick <i>Diane Smith</i> Telephone No. 703-308-1148 <i>F</i>
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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/US05/14005

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ in written format

☐ in computer readable form

c. time of filing/furnishing

☐ contained in international application as filed.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US05/14005

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)

Claims 5, 18 YES

Claims 1-4, 6-17, 19-27 NO

Inventive step (IS)

Claims NONE YES

Claims 1-27 NO

Industrial applicability (IA)

Claims 1-27 YES

Claims NONE NO

2. Citations and explanations:

Please See Continuation Sheet

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/US05/14005

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the questions whether the claims are fully supported by the description, are made:

Claims 10 and 19 are objected to under PCT Rule 66.2(a)(v) as lacking clarity under PCT Article 6 because claims 10 and 19 are indefinite for the following reason(s): Both claim 10 and claim 19 contains the limitation that the one or more alignment means of the interchangeable upper portion are engaging the one or more alignment means from the interchangeable upper portion'. It is not clear whether applicant means that these portions contact each other on the interchangeable upper portion or whether the alignment means of the interchangeable upper portion engage the alignment means of the fixed upper portion.

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International application No.
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Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

V. 2. Citations and Explanations:

Claims 1-2, 6-10, 12-16, 19-21, 23-25 and 27 lack novelty under PCT Article 33(2) as being anticipated by Dupree 4,958,447. Dupree '447 discloses all the limitations of the claims including the following: an interchangeable upper portion 50; one or more releasable fasteners 68a, 68b, 72a, 72b for releasably fastening the interchangeable upper portion to an article of footwear; one or more alignment means 68a, 68b, 72a, 72b for aligning the interchangeable upper portion on an article of footwear prior to releasably fastening the interchangeable upper portion to an article of footwear; the one or more alignment means include hook and loop fasteners 68a, 68b, 72a, 72b; the one or more alignment means are aligning the interchangeable upper portion on an article of footwear (see Figure 5); the interchangeable upper portion is releasably fastened to an article of footwear (see Figures 1 and 5); a fixed upper portion 14; a sole 12 connected to the fixed upper portion; one or more alignment means 68b, 72b of the interchangeable upper portion are engaging the one or more alignment means 68a, 72a from the fixed upper portion; engaging one or more alignment means on the interchangeable upper portion with one or more alignment means on the article of footwear (see Figures 1 and 5); releasably fastening the interchangeable upper portion to the fixed upper portion (see Figures 5 and 1).

Claims 1-4, 6-17 and 19-27 lack novelty under PCT Article 33(2) as being anticipated by Jacko 5,544,430. Jacko '430 discloses all the limitations of the claims including the following: an interchangeable upper portion 20; one or more releasable fasteners 26, 48 for releasably fastening the interchangeable upper portion to an article of footwear; one or more alignment means 26, 48 for aligning the interchangeable upper portion on an article of footwear prior to releasably fastening the interchangeable upper portion to an article of footwear; the one or more alignment means include hook and loop fasteners 26, 48; shoelaces 28 in the interchangeable upper portion; the interchangeable upper portion comprises a breathable material (see col. 3, lines 61-63); the one or more alignment means are aligning the interchangeable upper portion on an article of footwear (see Figures 1-3); the interchangeable upper portion is releasably fastened to an article of footwear (see Figure 1); a fixed upper portion 40; a sole 46 connected to the fixed upper portion; one or more alignment means 26 of the interchangeable upper portion are engaging the one or more alignment means 48 from the footwear; the interchangeable upper portion 20 substantially covers the fixed upper portion (see Figures 2-5); engaging one or more alignment means 26, 48 on the interchangeable upper portion with one or more alignment means on the article of footwear (see Figures 2-5); releasably fastening the interchangeable upper portion to the fixed upper portion (see Figures).

Claims 1-3, 6-10, 12-16, 19-22, 24-25 and 27 lack novelty under PCT Article 33(2) as being anticipated by Curry 5,109,614. Curry '614 discloses all the limitations of the claims including the following: an interchangeable upper portion 14; one or more releasable fasteners 18A, 18B, 30A, 30B, 18, 30 for releasably fastening the interchangeable upper portion to an article of footwear; one or more alignment means 18A, 18B, 30A, 30B, 18, 30 for aligning the interchangeable upper portion on an article of footwear prior to releasably fastening the interchangeable upper portion to an article of footwear; the one or more alignment means include hook and loop fasteners 18A, 18B, 30A, 30B, 18, 30; the interchangeable upper portion comprises shoelaces (see Figure 3); the one or more alignment means are aligning the interchangeable upper portion on an article of footwear (see Figures 2 and 3); the interchangeable upper portion is releasably fastened to an article of footwear (see Figures 2 and 3); a fixed upper portion 12; a sole (see Figure 2) connected to the fixed upper portion; one or more alignment means 30A, 30B, 30 of the interchangeable upper portion are engaging the one or more alignment means 18A, 18B, 18 from the fixed upper portion; engaging one or more alignment means on the interchangeable upper portion with one or more alignment means on the article of footwear (see Figures 2 and 3); releasably fastening

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Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

the interchangeable upper portion to the fixed upper portion (see Figures 2 and 3).

Claims 5 and 18 lack an inventive step under PCT Article 33(3) as being obvious over Jacko 5,544,430. Jacko '430 discloses all the limitations substantially as claimed except for the fixed upper portion being made of breathable material. Jacko '430 teaches that the cover for covering the upper portion of the shoe can be "porous to allow the fabric to breathe". Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make the material of the upper also porous to allow for the user's foot to breathe, thereby not limiting the function of the breathability of the shoe cover.